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SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SAMY ABDOU, M.D., an individual,

Plaintiff and Counterclaim  
Defendant,

vs.

ALPHATEC SPINE, INC., a California  
Corporation,

Defendant and Counterclaimant.

} Case No. 3:12-cv-01804-BEN-RBB  
} **ORDER GRANTING IN PART**  
} **DR. ABDOU'S *EX PARTE***  
} **MOTION FOR LEAVE TO FILE**  
} **A SUR-REPLY IN FURTHER**  
} **OPPOSITION TO ALPHATEC'S**  
} **MOTION FOR SUMMARY**  
} **JUDGMENT OF INVALIDITY**

} [Docket No. 62]

On January 10, 2014, Alphatec Spine, Inc. submitted its Reply in Support of Alphatec's Motion for Summary Judgment of Invalidity, including a Supplemental Declaration of Kevin T. Foley, M.D. (Docket No. 59-6) and "Evidentiary Objections and Motion to Strike Declaration of Ali Moshirfar, M.D." (Docket No. 59-7.)

The Court has considered Dr. Abdou's *Ex Parte* Motion for Leave to File a Sur-Reply in Further Opposition to Alphatec's Motion for Summary Judgment of Invalidity and other supporting papers.

After consideration of the moving papers submitted by Dr. Abdou, the court **GRANTS IN PART** Dr. Abdou's *Ex Parte* Motion. Dr. Abdou's proffered sur-reply both addresses Alphatec's evidentiary objections (Sur-Reply, Section B [Docket No. 62-2], at 5-8) as well as re-argues the merits of his opposition to Alphatec's motion for summary judgment (Sur-Reply [Docket No. 62-2], at 1-4). Accordingly, Dr. Abdou is granted leave to file an amended version of the proffered sur-reply that consists **only** of Section B of the proffered sur-reply (Docket No. 62-2, at 5-8), within **three (3)** days of the date this Order is filed.

## **IT IS SO ORDERED.**

Dated: January 20, 2014

HON. ROGER T. BENITEZ  
United States District Judge